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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,416	06/23/2003	Scott Seamans	40130-050010	9598
20350	7590	06/30/2005	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			MOHANDESI, JILA M	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 06/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/602,416	SEAMANS, SCOTT	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jila M. Mohandesi	3728	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 06/23/03 & 03/07/05.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,9,12-27 and 33-42 is/are pending in the application.
- 4a) Of the above claim(s) 33-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,9,12-27 and 40-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                    |                                                                             |
|----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____                                                |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10-09-03, 11-10-04, 01-31-05</u> .                                        | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Election/Restrictions***

1. Claims 33-39 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the paper filed on March 07, 2005.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 9, 12-32 and 40-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 9, the phrase, "the multiplication product (final growth value) of which is between 1.36 and 1.58 inclusively" is vague and indefinite. it is not clear what the multiplication product is and the limitation should be between 1.46 and 1.58 not 1.36 and 1.58.

Claim 42 recites the limitation "the lofted foam" in line 9. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 9, 12-23,27 and 40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seidel et al. (4,476,600) in view of Aguerre (6,237,249) and the admitted prior art page 11 of the instant specification. Seidel '600 discloses a breathable footwear piece, the breathable footwear piece comprising: a base section, wherein the base section includes an upper and a sole formed as a single part molded from a first continuous piece of expandable foam material; and wherein the upper includes a substantially horizontal portion (3) and a substantially vertical portion (5), and wherein a plurality of ventilators (6) are formed in the substantially vertical portion, and wherein at least one of the plurality of ventilators is formed in the substantially horizontal portion. See Figures 1 and 6 embodiments. Seidel '600 does not appear to disclose a strap section pivotable connected to the upper. Aguerre '249 discloses breathable footwear with a sole comprising a bottom surface and a support base, and wherein the support base includes a raised pattern where the foot contacts the support base to provide support to the heel of the wearer and helps maintain the footwear in position. Aguerre '249 also discloses the breathable footwear to include a strap pivotable attached by a plastic rivet at opposite ends thereof to the base section for securing the footwear on the foot of the wearer. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to connect a strap pivotable by rivets to the upper of Seidel '600 as taught by Aguerre '249 to better secure the footwear to the foot of the wearer.

With respect to the expandable foam material of Seidel '600 being lofted foam material , the admitted prior art in the instant specification discloses that it is desirable to

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manufacture footwear from an expandable EVA known commercially as LEVIREX which is considered to be a lofted foam material which can exhibit a final growth value of between 1.47 and 1.58. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the modified footwear of Seidel '600 from lofted foam material as taught by the admitted prior art in the instant specification to provide a relatively soft footwear piece that has very good anti-slip capabilities, and at the same time, size reproducibility and durability.

With respect to claim 24, see Figures 1 and 2 of Aguerre '249, which includes both toe, and heel raised sections for better supporting the foot. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide raised toe and heel sections as taught by Aguerre '249 to better support the foot.

With respect to claim 23, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a support base with a raised pattern to the breathable footwear of Seidel '600 as taught by Aguerre '249 to provide better support to the heel of the wearer and helps maintain the footwear in position.

With respect to claim 22, the toe region of Aguerre '249 clearly follows the contour of a human foot. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the toe section of the footwear of Seidel '600 follow generally the contour of the human foot as taught by Aguerre '249 for added comfort for the wearer.

The product-by-process limitation in claim 26 results in no structure that is different from Seidel '600 as modified above.

6. Claims 1, 9, 12-23, 27 and 40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seidel et al. (4,476,600) in view of Aguerre (6,237,249) and Sharpstein (5,615,496). Seidel '600 discloses a breathable footwear piece, the breathable footwear piece comprising: a base section, wherein the base section includes an upper and a sole formed as a single part molded from a first continuous piece of expandable foam material; and wherein the upper includes a substantially horizontal portion (3) and a substantially vertical portion (5), and wherein a plurality of ventilators (6) are formed in the substantially vertical portion, and wherein at least one of the plurality of ventilators is formed in the substantially horizontal portion. See Figures 1 and 6 embodiments. Seidel '600 does not appear to disclose a strap section pivotable connected to the upper. Aguerre '249 discloses breathable footwear with a sole comprising a bottom surface and a support base, and wherein the support base includes a raised pattern where the foot contacts the support base to provide support to the heel of the wearer and helps maintain the footwear in position. Aguerre '249 also discloses the breathable footwear to include a strap pivotable attached by a plastic rivet at opposite ends thereof to the base section for securing the footwear on the foot of the wearer. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to connect a strap pivotable by rivets to the upper of Seidel '600 as taught by Aguerre '249 to better secure the footwear to the foot of the wearer.

Sharpstein '496 discloses a footwear which discloses that it is desirable to make the upper, sole and the heel strap from the same material such as a low density foam. A low density foam is considered to be lofted foam. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the modified footwear of Seidel '600 from lofted foam material as taught by Sharpstein '496 to provide a relatively soft footwear piece that has very good anti-slip capabilities, and at the same time, size reproducibility and durability.

With respect to the final growth value of the expandable foam, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the growth value of the expandable foam, since it has been held that where the general conditions of a claim are discovered in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

With respect to claim 24, see Figures 1 and 2 of Aguerre '249, which includes both toe, and heel raised sections for better supporting the foot. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide raised toe and heel sections as taught by Aguerre '249 to better support the foot.

With respect to claim 23, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a support base with a raised pattern to the breathable footwear of Seidel '600 as taught by Aguerre '249 to provide better support to the heel of the wearer and helps maintain the footwear in position.

With respect to claim 22, the toe region of Aguerre '249 clearly follows the contour of a human foot. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the toe section of the footwear of Seidel '600 follow generally the contour of the human foot as taught by Aguerre '249 for added comfort for the wearer.

The product-by-process limitation in claim 26 results in no structure that is different from Seidel '600 as modified above.

7. Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over the above references as applied to claim 1 above, and further in view of Lamstein (Des. 416,667). Seidel '600 as modified above discloses all the limitations of the claims except for the support base including raised pattern extending throughout the surface and for the bottom surface of the sole having front and rear tread patterns longitudinally connected by a flat section. Lamstein discloses a molded footwear with the support base including raised pattern extending throughout the surface and with the bottom surface of the sole having front and rear tread patterns longitudinally connected by a flat section. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the support base with raised pattern extending throughout the surface for better massaging the foot and for the bottom surface of the sole having front and rear tread patterns longitudinally connected by a flat section for easier manufacturing as taught by Lamstein.



**Conclusion**

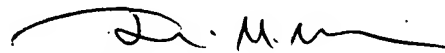
8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown is footwear analogous to applicant's instant invention.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jila M. Mohandesi whose telephone number is (571) 272-4558. The examiner can normally be reached on Monday-Friday 7:30-4:00 (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**JILA M. MOHANDESI  
PRIMARY EXAMINER**



Jila M Mohandesi  
Primary Examiner  
Art Unit 3728

JMM  
June 23, 2005